



February 18, 2009

H.B. 425 Written Testimony
Hearing – House Natural Resources Committee

Recent sales of oil and gas leases by Department of Natural Resources Conservation (DNRC) have highlighted the need to put into law notification requirements so that meaningful input can be received by the Department before the auction of oil and gas leases. Currently, DNRC is only required by law to provide notice *after* the sale of leases, when the Board of Land Commissioners approves bids received at the lease auction.

The process for leasing of state lands for oil and gas drilling includes DNRC holding a lease auction in which bids are made on specific parcels. These bids are then approved at the next Board Land Commissioners meeting and the leases are then issued to the winning bidders.

Under Title 2, Montana Code Annotated, Montana citizens are ensured their constitutional right to be afforded reasonable opportunity to participate in the operation of governmental agencies prior to the final decision of the agency. Because of the process in place for oil and gas leasing of state lands, this right and requirement for notification is not triggered by the auction of leases as one would expect, but rather the following action when the Board of Land Commissioners approve lease bids made at the previous auction.

The effect of this process is that leases have already been sold at auction and the action that triggers public notification, the approval of bids by the Land Board, takes place essentially after the horses have already been let out of the barn. Rarely has the Land Board not accepted a bid on a lease sold at auction, with only one instance in the past several years in which a lease was not approved – and only then because the Land Board did not feel that the lease parcel received a high enough bid. Because of the process in place, it is critical that public involvement and notification take place *before* the sale of leases so that stakeholders and the Department can collaborate early in the process and ensure that adequate lease stipulations are in place to protect values such as fish and wildlife habitat and hunting and angling opportunities.

Leases sold at the September, 2008 oil and gas lease sale were contentious among many Montanans, especially citizens in Gallatin, Park and Sweet Grass counties. A number of citizens protested the lease sale on the grounds that the Department did not perform adequate notification in affected counties about proposed lease parcels. At the following September 15, 2008 Land Board meeting which approved the sale of the contentious leases, DNRC Trust Land Management Attorney Tommy Butler clarified the State's notification requirements, stating:

The Land Board is the governing body that issues leases and make irrevocable commitments of property interests on state lands. The type of notice that is required under Title 2, MCA, is for governing bodies that make irrevocable commitments or

actions. Therefore, the public notice that people have been requesting is actually the public notice that the Land Board gives of its agenda items. (Minutes, 9-15-2008 Board of Land Commissioners meeting) (emphasis added)

This requirement for notification only after leases have been sold emphasizes the need to put into law efficient, consistent and meaningful notification requirements for the Department to follow when considering public lands to be put up for lease.

The Department is given some direction on notification by Rule 36.25.205 (3) in which the Department is directed to provide at least 2 notices in a statewide publication, one to solicit lease nominations and another of proposed leases to be offered. The end result of this direction by Rule has not always resulted in meaningful notification to the very people who would be most affected by leases.

Given that lack of statutory direction for notification, the Department has done a commendable job attempting to notify affected people, resulting in procedures that are absent from statute, rule, or regulation. By default, these attempts at additional notification measures have usually come as the result of conflicts. Measures such as split estate land owner notification, posting of lease information and maps online, making two notifications of proposed leases and attending public meetings are all steps that the Department has taken to increase public awareness and participation on lease sales.

HB 425 attempts to head off potential conflicts in the future by codifying notification requirements that are meaningful to citizens, and provide Montanans with the best opportunity to provide input about proposed leases. We believe that the end result will be a more efficient system of leasing, with fewer conflicts, and consistent requirements to be followed into the future. In doing so, HB 425 will place in to law the current timeline used for notifying the public about lease sales, and ensure that measures the department already employs – such as online mapping and split estate landowner notification – will continue into the future. HB 425 will also employ additional measures that we feel will greatly increase public awareness of lease sales by requiring notification in affected counties, notifying adjacent and neighboring property owners, and encouraging public meetings.

Trout Unlimited supports H.B. 425 and urges the Committee to support this important and common sense piece of legislation.

Respectfully submitted,



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